



## Law and Justice Interim Committee

### 66th Montana Legislature

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### Memorandum

To: Law and Justice Interim Committee  
From: Julianne Burkhardt, Staff Attorney  
Date: August 19, 2019

Re: Legal Analysis of the Montana Board of Crime Control's (MBCC) allocation, structure, staffing, and/or authority, from the perspective of the Legislature, before and after the 2017 transfer from the Department of Justice (DOJ) to the Department of Corrections (DOC) and an analysis of the Law and Justice Interim Committee's (LJIC) oversight responsibility regarding the MBCC.

Before the passage of Senate Bill No. 95 (2017), the allocation description for the MBCC was found in section 2-15-2006 (2015).

**2-15-2006. Board of crime control -- composition -- allocation.** (1) There is a board of crime control.

(2) *The board is allocated to the department [of Justice] for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.*

(3) The board is composed of 18 members appointed by the governor in accordance with 2-15-124 and any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended. The board shall be representative of state and local law enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and shall include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention. (2015) (*Emphasis added*).

Section 2-15-121, MCA, is the section that addresses allocation for administrative purposes only and states as follows<sup>1</sup>:

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<sup>1</sup> When this temporary section terminates on July 1, 2021, section 2-15-121(1)(a)(ii), will be deleted and 2-15-121(1)(a) will read: "(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department".

**2-15-121. (Temporary) Allocation for administrative purposes only.** (1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) (i) *exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department except as provided in subsection (1)(a)(ii);*

(ii) accede, if the agency is a licensing board regulated by the department of labor and industry under Title 37, to the active supervision required by 37-1-121(1)(d);

(b) submit its budgetary requests through the department; and

(c) submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

(e) print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration. (Terminates July 1, 2021—sec. 8, Ch. 322, L. 2017.) (*Emphasis added*).

Section 8 of Senate Bill No. 95 (2017), contained a coordination instruction that allocated the MBCC to the Department of Corrections (DOC). However, the phrase "for administrative purposes only" was stricken as well as the ability of the MBCC to hire its own personnel. In addition, Senate Bill No. 95 (2017) contained another section which created a crime control bureau within the DOC. Section 2-15-2006 was renumbered and is now section 2-15-2306. Please note that section 2-15-2306(3), is identical to 2-15-2006(3)(2015). The statutes currently read as follows.

**2-15-2306. Board of crime control — composition — allocation.** (1) There is a board of crime control.

(2) *The board is allocated to the department of corrections.*

(3) The board is composed of 18 members appointed by the governor in accordance with 2-15-124 and any special requirements of Title I of the Omnibus

Crime Control and Safe Streets Act, as amended. The board must be representative of state and local law enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and must include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention. (*Emphasis added*)

**2-15-2307. Crime control bureau.** There is a bureau within the office of the director called the crime control bureau. The purpose of the bureau is to provide staff and support to the board of crime control established in 2-15-2306.

On the surface, the changes to the MBCC's allocation, structure, and authority seem simple. Before the 2017 legislative session the MBCC was administratively allocated to the DOJ and had the ability to hire its own staff. *See* 2-15-2006(2) (2015). Following the passage of Senate Bill No. 95 (2017), the MBCC was allocated to the DOC, no longer had the ability to hire its own staff, no longer had the declaration of being administratively attached, and the staff of the MBCC are contained in a bureau within the DOC.

When analyzing the statutory changes, it is reasonable to assume that those changes have meaning. While the change moving the MBCC from the DOJ to the DOC seems easy on its face to understand, the absence of the phrase "allocated to the department [of corrections] for administrative purposes only as prescribed in 2-15-121" make it much more difficult to ascertain the meaning. Similarly, the creation of a bureau to "provide staff and support" for the MBCC is very clear on the surface but what this change might mean to the operation and authority of the MBCC is much more complex. Ultimately, we can only identify the potential questions regarding the legislative effect but not provide a definitive answer regarding what the statutory changes mean. If these questions were ever to find their way before a judge, which is unlikely, a judge would be bound by section 1-2-101.

**1-2-101. Role of the judge — preference to construction giving each provision meaning.** In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, *not to insert what has been omitted or to omit what has been inserted*. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. (*Emphasis added*).

Section 1-2-101, MCA, provides guidance and supports the idea that every statutory change has meaning and that it is not appropriate to insert language to obtain a particular result. In other words, the absence of the phrase "allocated to the department [of corrections] for administrative purposes only as prescribed in 2-15-121" in section 2-15-2306, MCA, has meaning, and that meaning likely is that the MBCC is no longer an administratively allocated agency. What we don't know at this point is what this means for the MBCC. Furthermore, when a statute is clear and unambiguous on its face, there is no reason to look at legislative intent and

other interpretations are likely barred. *See generally* State v. Hubbard, 200 Mont. 106, 649 P.2d 1331 (1983); White v. White, 195 Mont. 470, 636 P.2d 844 (1981).

The situation is further complicated by the question of how the MBCC interacts with the LJIC following the passage of Senate Bill No. 95 (2017). The duties of the interim committees are found in section 5-5-215, MCA.

**5-5-215. Duties of interim committees.** (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
  - (b) subject to 5-5-217(3), conduct interim studies as assigned;
  - (c) *monitor the operation of assigned executive branch agencies with specific attention to the following:*
    - (i) *identification of issues likely to require future legislative attention;*
    - (ii) *opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and*
    - (iii) *experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;*
  - (d) review, if requested by any member of the interim committee, the statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;
  - (e) *review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and*
  - (f) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.
- (2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.
- (3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee. (*Emphasis added*)

The specific duties of the LJIC are found in section 5-5-226, MCA.

**5-5-226. Law and justice interim committee.** The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the office of state public defender, the department of corrections, and the department of justice *and the entities attached to the departments for administrative purposes*. The committee shall act as a liaison with the judiciary.

In the case of the MBCC, before Senate Bill No. 95 (2017), the MBCC was monitored directly by the LJIC as an "entit[y] attached to the department[]" for administrative purposes." *See* section 5-5-226, MCA. The MBCC was not monitored through the DOJ. In other words, LJIC

staff would contact the MBCC executive director directly to request a report. Further, the MBCC was able to bring proposed legislation on its own behalf to the LJIC for approval, and not as part of the DOJ requested legislation.

Under section 2-15-2306, MCA, and 2-15-2307, MCA, the MBCC arguably is not able to interact with the LJIC independently of DOC. As a practical matter, what this means is any proposed legislation requested by the MBCC would come through the DOC and the LJIC would not normally hear separately from the MBCC unless the committee specifically requested information.

As the effects of these legislative changes continue to evolve it is very likely that other distinctions or effects of the removal of the administrative attachment language will develop.<sup>2</sup>

The question for the LJIC going forward is whether the committee is satisfied with the status quo or wants to reestablish with legislation that the MBCC is an administratively attached entity or clearly establish that the MBCC and its staff are part of a bureau within the DOC and what that means for the MBCC. Alternatively, the LJIC could propose legislation setting out the authority, responsibility, and other logistics with more specificity and geared only to the MBCC.

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<sup>2</sup>The MBCC's authority regarding grant funding decisions and whether the DOC may override those decisions is not the subject of this memo. This topic is covered in a memo dated November 8, 2018, by Lorraine Schneider, DOC staff attorney, who concluded based on section 44-7-101(1), MCA, and federal law that the oversight of federal grants resided with the MBCC because the MBCC is designated as the "state planning agency" for purposes of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.